

expenses are subject to the substantiation requirements of section 274.

(f) *Election.* To elect to deduct the amounts prescribed by this section, a Member must attach to his return for the taxable year a statement indicating, (1) that the deduction for travel expenses while living in the Washington, DC area are computed pursuant to §5e.274-8, and (2) whether a separate deduction is being taken for interest and taxes paid or incurred with respect to the personal residence of the Member if in the Washington, DC area.

(g) *Effective date.* This section is effective for taxable year beginning after December 31, 1980.

(h) *Examples.* The following examples are based on a calendar from a Final Edition of the Calendar of the United States, House of Representatives and History of Legislation. The marked days indicate days the House of Representatives was in session.

*Example 1* In determining the number of Congressional days for 198X for which the designated amount may be computed, the number of days in such year is reduced by 125 days determined as follows:

	Days
Feb. 14-18 .....	5
Apr. 3-14 .....	12
May 23-27 .....	5
July 3-20 .....	18
Aug. 2-17 .....	16
Aug. 29-Sept. 2 .....	5
Oct. 3-Nov. 11 .....	40
Nov. 22-Nov. 30 .....	9
Dec. 17-Dec. 31 .....	15
Total .....	125

Thus for 198X (a leap year) a typical Member of the House of Representatives will have 241 (366-125) Congressional days.

*Example 2* On August 1, Z a calendar year taxpayer is elected to the Congress to fill the unexpired term of Member Y. In determining the number of Congressional days, Z may only consider the number of days during the year for which he was a Member of Congress. For Z the number of Congressional days is 68.

*Example 3* Member X, a calendar year taxpayer, owns his own home in Washington, DC, where he lives with his family. While in Washington, DC, Member X is away from home within the meaning of section 162(a). X maintains no records attributable to his expenses in Washington, DC X has been a Member of Congress for the entire year. The maximum amount of subsistence for Washington, DC for 198X is \$75. X may deduct for 198X

\$18,075 (241 days×\$75) attributable to expenses while away from home in Washington, DC. Even if X maintained records as to living expenses in Washington, DC, X may choose to deduct \$18,075 as the total amount attributable to living expenses in Washington, DC. If X deducts \$18,075 X may not deduct any interest and taxes under section 163 or 164 attributable to the residence in Washington, DC.

*Example 4* Member C, a calendar year taxpayer owns his own home in Washington, DC, where he lives with his family. While in Washington, DC, Member C is away from home within the meaning of section 162(a). C can establish that he paid \$12,000 as interest on a mortgage and \$3,000 in local real estate taxes. C has been a Member of Congress for the entire year. C may choose to deduct \$12,050 (241 days×[ $\frac{2}{3}$ ×\$75]) attributable to expenses in Washington, DC. Further, C may deduct under sections 163 and 164 \$12,000 of interest and \$3,000 of taxes respectively.

*Example 5* Assume the same facts as in Example (4). In addition, on March 15, 16, and 17, Member C travels to New York City to deliver a speech for which he receives an honorarium which he includes in income. C receives no additional amounts for travel reimbursement. While in New York City C incurs \$350 for 3 nights lodging at a hotel and \$150 for meals. In addition to the amounts deductible pursuant to this section, C may deduct the \$500 as a travel expenses. Such deduction is subject to the substantiation rules of section 274.

*Example 6* Assume the same facts as example (5). Member C receives, in addition to the honorarium, \$600 reimbursement for travel expenses. C must include the \$600 in income and may deduct the travel expenses he incurred.

[T.D. 7802, 47 FR 2987, Jan. 21, 1982; 47 FR 4680, Feb. 2, 1982]

## PART 5f—TEMPORARY INCOME TAX REGULATIONS UNDER THE TAX EQUITY AND FISCAL RESPONSIBILITY ACT OF 1982

Sec.

5f.103-1 Obligations issued after December 31, 1982, required to be in registered form.

5f.103-2 Public approval of industrial development bonds.

5f.103-3 Information reporting requirements for certain bonds.

5f.163-1 Denial of interest deduction on certain obligations issued after December 31, 1982, unless issued in registered form.

5f.163(f)(8)-1 Questions and answers concerning transitional rules and related matters regarding certain safe harbor leases.

AUTHORITY: 26 U.S.C. 7805. Secs. 5f.103-1 and 5f.163-1 also issued under 26 U.S.C. 103(j), 26 U.S.C. 163(f), and 96 Stat. 595.

**§ 5f.103-1 Obligations issued after December 31, 1982, required to be in registered form.**

(a) *Registration; general rule.* Interest on a registration-required obligation (as defined in paragraph (b) of this section) shall not be exempt from tax notwithstanding section 103 (a) or any other provision of law, exclusive of any treaty obligation of the United States, unless the obligation is issued in registered form (as defined in paragraph (c) of this section).

(b) *Registration-required obligation.* For purposes of this section, the term “registration-required obligation” means any obligation except any one of the following:

(1) An obligation not of a type offered to the public. The determination as to whether an obligation is not of a type offered to the public shall be based on whether similar obligations are in fact publicly offered or traded.

(2) An obligation that has a maturity at the date of issue of not more than 1 year.

(3) An obligation issued before January 1, 1983. An obligation first issued before January 1, 1983, shall not be considered to have been issued on or after that date merely as a result of the existence of a right on the part of the holder of such obligation to convert the obligation from registered form into bearer form, or as a result of the exercise of such a right.

(4) An obligation described in § 5f.163-1 (c) (relating to certain obligations issued to foreign persons).

(c) *Registered form*—(1) *General rule.* An obligation issued after January 20, 1987, pursuant to a binding contract entered into after January 20, 1987, is in registered form if—

(i) The obligation is registered as to both principal and any stated interest with the issuer (or its agent) and transfer of the obligation may be effected only by surrender of the old instrument and either the reissuance by the issuer of the old instrument to the new holder or the issuance by the issuer of a new instrument to the new holder,

(ii) The right to the principal of, and stated interest on, the obligation may

be transferred only through a book entry system maintained by the issuer (or its agent) (as described in paragraph (c)(2) of this section), or

(iii) The obligation is registered as to both principal and any stated interest with the issuer (or its agent) and may be transferred through both of the methods described in subdivisions (i) and (ii).

(2) *Special rule for registration of a book entry obligation.* An obligation shall be considered transferable through a book entry system if the ownership of an interest in the obligation is required to be reflected in a book entry, whether or not physical securities are issued. A book entry is a record of ownership that identifies the owner of an interest in the obligation.

(d) *Effective date.* The provisions of this section shall apply to obligations issued after December 31, 1982, unless issued on an exercise of a warrant for the conversion of a convertible obligation if such warrant or obligation was offered or sold outside the United States without registration under the Securities Act of 1933 and was issued before August 10, 1982.

(e) *Special rules.* The following special rules apply to obligations issued after January 20, 1987, pursuant to a binding contract entered into after January 20, 1987.

(1) An obligation that is not in registered form under paragraph (c) of this section is considered to be in bearer form.

(2) An obligation is not considered to be in registered form as of a particular time if it can be transferred at that time or at any time until its maturity by any means not described in paragraph (c) of this section.

(3) An obligation that as of a particular time is not considered to be in registered form by virtue of subparagraph (2) of this paragraph (e) and that, during a period beginning with a later time and ending with the maturity of the obligation, can be transferred only by a means described in paragraph (c) of this section, is considered to be in registered form at all times during such period.

(f) *Examples.* The application of this section may be illustrated by the following examples:

*Example (1).* Municipality X publicly offers its general debt obligations to United States persons. The obligations have a maturity at issue exceeding 1 year. The obligations are registration-required obligations under § 5f.103-1(b). When individual A buys an obligation, X issues an obligation in A's name evidencing A's ownership of the principal and interest under the obligation. A can transfer the obligation only by surrendering the obligation to X and by X issuing a new instrument to the new holder. The obligation is issued in registered form.

*Example (2).* Municipality Y issues a single obligation on January 4, 1983 to Bank M provided that (i) Bank M will not at any time transfer any interest in the obligation to any person unless the transfer is recorded on Municipality Y's records (except by means of a transfer permitted in (ii) of this example) and (ii) interests in the obligation that are sold by Bank M (and any persons who acquire interests from M) will be reflected in book entries. C, an individual, buys an interest in Y's obligation from Bank M. Bank M receives the interest or principal payments with respect to C's interest in the obligation as agent for C. Bank M records interests in the Municipality Y obligation as agent of Municipality Y. Any transfer of C's interest must be reflected in a book entry in accordance with Bank M's agreement with Municipality Y. Since C's interest can only be transferred through a book entry system maintained by the issuer (or its agent), the obligation is considered issued in registered form. Interest received by C is excludable from gross income under section 103(a).

*Example (3).* Municipality Z wishes to sell its debt obligations having a maturity in excess of 1 year. The obligations are sold to Banks N, O, and P, all of which are located in Municipality Z. By their terms the obligations are freely transferable, although each of the banks has stated that it acquired the obligations for purposes of investment and not for resale. Obligations similar to the obligations sold by Municipality Z are traded in the market for municipal securities. The obligations issued by Municipality Z are of a type offered to the public and are therefore registration-required under § 5f.103-1 (b).

*Example (4).* Corporation A issues an obligation that is registered with the corporation as to both principal and any stated interest. Transfer may be effected by the surrender of the old instrument and either the reissuance by the issuer of the old instrument to the new holder or the issuance by the issuer of a new instrument to the new holder. The obligation can be converted into a form in which the right to the principal of, or stated interest on, the obligation may be effected by physical transfer of the obligation. Under § 5f.103-1 (c) and (e), the obligation is not considered to be in registered form and is considered to be in bearer form.

*Example (5).* Corporation B issues its obligations in a public offering in bearer definitive form. Beginning at X months after the issuance of the obligations, a purchaser (either the original purchaser or a purchaser in the secondary market) may deliver the definitive bond in bearer form to the issuer in exchange for a registration receipt evidencing a book entry record of the ownership of the obligation. The issuer maintains the book entry system. The purchaser identified in the book entry as the owner of record has the right to receive a definitive bearer obligation at any time. Under § 5f.103-1 (c) and (e), the obligation is not considered to be issued in registered form and is considered to be issued in bearer form. All purchasers of the obligation are considered to hold an obligation in bearer form.

*Example (6).* Corporation C issues obligations in bearer form. A foreign person purchases a definitive bearer obligation and then sells it to a United States person. At the time of the sale, the United States person delivers the bearer obligation to Corporation C and receives an obligation that is identical except that the obligation is registered as to both principal and any stated interest with the issuer or its agent and may be transferred at all times until its maturity only through a means described in § 5f.103-1(c). Under § 5f.103-1(e), the obligation is considered to be in registered form from the time it is delivered to Corporation C until its maturity.

(g) *Cross-references.* See section 103A(j)(1) for the registration requirement of certain mortgage subsidy bonds issued after December 31, 1981, and § 6a.103A-1(a)(5) for the definition of registered form for such obligations issued after December 31, 1981, and on or before December 31, 1982. See also section 103(h) (requiring registration of certain energy bonds issued on or after October 18, 1979).

[T.D. 7852, 47 FR 51361, Nov. 15, 1982, as amended by T.D. 8111, 51 FR 15463, Dec. 19, 1986]

#### **§ 5f.103-2 Public approval of industrial development bonds.**

(a) *General rule.* An industrial development bond (within the meaning of § 1.103-7(b)(1) issued after December 31, 1982, shall be treated as an obligation not described in section 103(a) unless it is issued as part of an issue which satisfies the public approval requirement of section 103(k) and paragraph (c) of

this section or is described in the exceptions set forth in paragraph (b) of this section.

(b) *Exceptions*—(1) *No extension of maturity*. Paragraph (a) of this section does not apply to a refunding obligation if—

(i) It refunds an obligation which was approved under section 103(k) and this section (or which is treated as approved pursuant to paragraph (f) of this section), and

(ii) It has a maturity date which is not later than the maturity date of the obligation to be refunded.

(2) *Refunding of pre-July 1, 1982, obligation*. Paragraph (a) of this section does not apply to an obligation issued solely to refund an obligation which—

(i) Was issued before July 1, 1982, and

(ii) Has a term which does not exceed 3 years.

The term of an obligation is determined without regard to whether it is a refunding obligation. With respect to the refunding of an issue also containing obligations with terms which exceed 3 years, paragraph (b)(2) applies only if the refunding issue proceeds are used solely to refund obligations with terms not exceeding 3 years and to pay reasonable incidental costs of the refunding (*e.g.*, legal and accounting fees, printing costs, and rating fees) attributable thereto. Paragraph (b)(2) applies only to issues issued after December 31, 1982, the proceeds of which are used to refund issues issued prior to July 1, 1982. Thus, subsequent refundings of such refunding issues must satisfy the public approval requirement of section 103(k) and paragraph (c) of this section.

(c) *Public approval requirement*—(1) *In general*. An issue is publicly approved if prior to the date of issue the governmental unit(s) described in subparagraphs (2) and (3) this paragraph (c) approve the issue, in the manner described in paragraph (d) of this section. See paragraph (f) for rules pertaining to determining the scope of an approval and paragraph (g)(1) for the definition of “governmental unit”.

(2) *Issuer approval*. The governmental unit (i) which will issue the obligations or (ii) on behalf of which the issue is to be issued must approve the issue (“issuer approval”). If the issuer is not a governmental unit, the governmental

unit on behalf of which the issuer acts shall be determined in a manner consistent with determinations under § 1.103-1, and such unit must approve the issue. However, in the case of an issuer which issues obligations on behalf of more than one governmental unit (*e.g.*, an authority which acts for two counties), any one of such units may give the issuer approval required by this paragraph (c)(2).

(3) *Host approval*. Each governmental unit the geographic jurisdiction (as defined in paragraph (g)(4)) of which contains the site of a facility to be financed by the issue must approve the issue (“host approval”). However, if the entire site of a facility to be financed by the issue is within the geographic jurisdiction of more than one governmental unit within a State (counting the State as a governmental unit within such State), then any one of such units may provide host approval for the issue with respect to that facility. For purposes of this paragraph (c)(3), if property to be financed by the issue is located within two or more governmental units but not entirely within either of such units, each portion of the property which is located entirely within the smallest respective governmental units may be treated as a separate facility. The issuer approval (as described in paragraph (c)(2)) may be treated as a host approval if the governmental unit giving the issuer approval is also a governmental unit described in this paragraph (c)(3). See paragraph (e)(2) with respect to host approval by a governmental unit with no applicable elected representative.

(d) *Method of public approval*. For purposes of this section, an issue is approved by a governmental unit only if—

(1) An applicable elected representative (as defined in paragraph (e)) of such unit approves the issue following a public hearing (as defined in paragraph (g)(2)) held in a location which, under the facts and circumstances, is convenient for residents of the unit, and for which there was reasonable public notice (as defined in paragraph (g)(3)), or

(2) A referendum of the voters of the unit (as defined in paragraph (g)(5)) approves the issue.

An approval may satisfy the requirements of this section without regard to the authority under State or local law for the acts constituting such approval. The location of hearing will be presumed convenient for residents of the unit if it is located in the approving governmental unit's capital or seat of government. If more than one governmental unit is required to provide a public hearing, such hearings may be combined as long as the combined hearing is a joint undertaking that provides all of the residents of the participating governmental units (*i.e.*, those relying on such hearing as an element of public approval) a reasonable opportunity to be heard. The location of any combined hearing is presumed to provide a reasonable opportunity to be heard provided it is no farther than 100 miles from the seat of government of each participating governmental unit beyond whose geographic jurisdiction the hearing is conducted.

(e) *Applicable elected representative—*  
(1) *In general.* The applicable elected representative of a governmental unit means—

- (i) Its elected legislative body,
- (ii) Its chief elected executive officer,
- (iii) In the case of a State, the chief elected legal officer of the State's executive branch of government, or
- (iv) Any official elected by the voters of the unit and designated for purposes of this section by the unit's chief elected executive officer or by State or local law to approve issues for the unit.

For purposes of subdivisions (ii), (iii), and (iv) of this paragraph (e)(1), an official shall be considered elected by the voters of the unit only if he is popularly elected at-large by the voters of the governmental unit. If an official popularly elected at-large by the voters of a governmental unit is appointed or selected pursuant to State or local law to be the chief executive officer of the unit, such official is deemed to be an elected chief executive officer for purposes of this section but for no longer than his tenure as an official elected at-large. In the case of a bicameral legislature which is popularly elected, both chambers together constitute an applicable elected representative, but neither chamber does independently, unless so designated under paragraph

(e)(1)(iv). If multiple elected legislative bodies of a governmental unit have independent legislative authority, however, the body with the more specific authority relating to the issue is the only legislative body described in paragraph (e)(1)(i) of this section. See paragraph (h), Example (7) of this section.

(2) *Governmental unit with no applicable elected representative.* (i) The applicable elected representatives of a governmental unit with no representative (but for this paragraph (e)(2) and section 103(k)(2)(E)(ii)) are deemed to be those of the next higher governmental unit (with an applicable elected representative) from which the governmental unit derives its authority. For purposes of this subparagraph (2), a governmental unit derives its authority from another unit which—

(A) Enacts a specific law (*e.g.*, a provision in a State constitution, charter or statute) by or under which the governmental unit is created,

(B) Otherwise empowers or approves the creation of the governmental unit, or

(C) Appoints members to the governing body of the governmental unit.

In the case of a governmental unit with no applicable elected representative (but for this paragraph (e)(2)), any unit described in subdivision (A), (B), or (C) or this paragraph (e)(2)(i) may be treated as the next higher unit, without regard to the relative status of all of such units under State law.

(ii) In the case of a host approval (as required under paragraph (c)(3) of this section), a unit may be treated as the next higher unit, only if—

(A) The facility is located within its geographic jurisdiction, and

(B) Eligible individuals, if any, residing at the site of the facility are entitled to vote for the applicable elected representative of that unit (as determined under this paragraph (e)).

(3) *On behalf of issuers.* In the case of an issuer which is not a governmental unit but which issues bonds on behalf of a governmental unit, the applicable elected representative is any applicable elected representative of the unit on behalf of which the bonds are issued. If the unit on behalf of which the bonds are issued has no applicable elected representative (but for paragraph (e)(2)

of this section), the applicable elected representative of the governmental unit is determined in the manner described in paragraph (e)(2).

(f) *Scope of approval*—(1) *In general.* Public approval is required by section 103(k) and this section for issues of industrial development bonds, except as otherwise provided in paragraphs (a) and (b) of this section. An issue is treated as approved if the governmental units (described in paragraph (c) of this section in relation to the issue) have approved either—

(i) The issue (by approving each facility to be financed), not more than one year before the date of issue, or

(ii) A plan of financing for each facility financed by the issue pursuant to which the issue in question is timely issued (as required in paragraph (f)(3) of this section).

In either case, the scope of the approval is determined by the information, as specified in paragraph (f)(2), contained in the notice of hearing (when required) and the approval.

(2) *Information required.* A facility is within the scope of an approval if the notice of hearing (when required) and the approval contain—

(i) A general, functional description of the type and use of the facility to be financed (e.g., “a 10,000 square foot machine shop and hardware manufacturing plant”, “400-room airport hotel building”, “dock facility for supertankers”, “convention center auditorium and sports arena with 25,000 seating capacity”, “air and water pollution control facilities for oil refinery”),

(ii) The maximum aggregate face amount of obligations to be issued with respect to the facility,

(iii) The initial owner, operator, or manager of the facility,

(iv) The prospective location of the facility by its street address or, if none, by a general description designed to inform readers of its specific location.

An approval is valid for purposes of this section with respect to any issue used to provide publicly approved facilities, notwithstanding insubstantial deviations with respect to the maximum aggregate face amount of the bonds issued under the approval for the facility, the name of its initial owner,

manager, or operator, or the type or location of the facility from that described in the approval. An approval or notice of public hearing will not be considered to be adequate if any of the items in subdivisions (i) through (iv) of this subparagraph (2), with respect to the facility to be financed, are unknown on the date of the approval or the date of the public notice.

(3) *Timely issuance pursuant to a plan of financing.* An issue is timely issued pursuant to a plan of financing for a facility if—

(i) The issue is issued no later than 3 years after the first issue pursuant to the plan, and

(ii) The first such issue in whole or in part issued pursuant to the plan was issued no later than 1 year after the date of approval.

(4) *Facility—definition.* For purposes of this paragraph (f), the term “facility” includes a tract or adjoining tracts of land, the improvements thereon and any personal property used in connection with such real property. Separate tracts of land (including improvements and connected personal property) may be treated as one facility only if they are used in an integrated operation.

(g) *Definitions.* For purposes of this section—

(1) *Governmental unit.* Governmental unit has the same meaning as in § 1.103-1. Thus, a governmental unit is a State, territory, a possession of the United States, the District of Columbia, or any political subdivision thereof. The term “political subdivision” denotes any division of any State or local governmental unit which is a municipal corporation or which has been delegated the right to exercise part of the sovereign power of the unit.

(2) *Public hearing.* Public hearing means a forum providing a reasonable opportunity for interested individuals to express their views, both orally and in writing, on the proposed issue of bonds and the location and nature of a proposed facility to be financed. In general, a governmental unit may select its own procedure for the hearing, provided that interested individuals have a reasonable opportunity to express their views. Thus, it may impose reasonable requirements on persons

who wish to participate in the hearing, such as a requirement that persons desiring to speak at the hearing so request in writing at least 24 hours before the hearing or that they limit their oral remarks to 10 minutes. For purposes of this public hearing requirement, it is not necessary, for example, that the applicable elected representative who will approve the bonds be present at the hearing, that a report on the hearing be submitted to that official, or that State administrative procedural requirements for public hearings in general be observed. However, compliance with such State procedural requirements (except those at variance with a specific requirement set forth in this section) will generally assure that the hearing satisfies the requirements of this section. The hearing may be conducted by any individual appointed or employed to perform such function by the governmental unit or its agencies, or by the issuer (if on behalf of issuer). Thus, for example, for bonds to be issued by an authority that acts on behalf of a county, the hearing may be conducted by the authority, the county, or an appointee or employee of either.

(3) *Reasonable public notice.* Reasonable public notice means published notice which is reasonably designed to inform residents of the affected governmental units, including residents of the issuing unit and the governmental unit where a facility is to be located, of the proposed issue. The notice must state the time and place for the hearing and contain the information contained in paragraph (f)(2) of this section. Notice is presumed reasonable if published no fewer than 14 days before the hearing. Except in the locality of the facility, publication is presumed to be reasonably designed to inform residents of the approving governmental unit if given in the same manner and same locations as required of the approving governmental unit for any other purposes for which applicable State or local law specifies a notice of public hearing requirement (including laws relating to notice of public meetings of the governmental unit). Notice is presumed reasonably designed to inform affected residents in the locality of the facility only if published in one or

more newspapers of general circulation available to residents of that locality or if announced by radio or television broadcast to those residents.

(4) *Geographic jurisdiction.* Geographic jurisdiction is the area encompassed by the boundaries prescribed by State or local law for a governmental unit or, if there are no such boundaries, the area in which a unit may exercise such sovereign powers that make that unit a governmental unit for purposes of § 1.103-1 and this section.

(5) *Voter referendum.* A voter referendum is a vote by the voters of the affected governmental unit conducted in the manner and at such a time as voter referenda on matters relating to governmental spending or bond issuances by the governmental unit under applicable State and local law.

(h) *Examples.* The provisions of this section may be illustrated by the following examples:

*Example (1).* State X proposes to issue an industrial development bond, the proceeds of which are to finance a facility located entirely within the geographic jurisdiction of City Y (which is located in State X). Under the provisions of paragraph (c), only State X must approve the issue because State X is the issuer and the facility is to be located entirely within the State's geographic jurisdiction. Its applicable elected representative must approve the issue after the public notice and public hearing requirements are satisfied.

*Example (2).* (i) Industrial Development Authority X proposes to issue an industrial development bond, the proceeds of which are to finance a facility located entirely within the geographic jurisdiction of City Y (which is located in State Z). Authority X acts on behalf of State Z. Under the provisions of paragraph (c), only State Z must approve the issue because State Z is the governmental unit on behalf of which Authority X, the issuer, is acting and the facility is to be located entirely within its geographic jurisdiction.

(ii) State Z has a governor, an elected bicameral legislature and an appointed attorney general who is the chief legal officer of State Z. Under the laws of State Z, the attorney general must approve any issue of industrial development bonds. The approval by the attorney general is not a sufficient approval under this section, since the attorney general is not an applicable elected representative within the meaning of this section. Under the provisions of paragraphs (d) and (e), either the governor, both chambers of the legislature or any popularly elected

official of the State who is designated for this purpose by the governor or by State law must approve the issue after the public notice and public hearing requirements are satisfied.

*Example (3).* (i) County Y, a county in State X, proposes to issue an industrial development bond, the proceeds of which are to finance a facility located entirely within its jurisdiction. Under the provisions of paragraph (c), only County Y must approve the issue because County Y is the issuer and the facility is to be located entirely within the geographic jurisdiction of County Y.

(ii) County Y has no elected officials or legislature. County Y derives its authority from State X which is the next higher governmental unit with an applicable elected representative. The laws of State X designate the attorney general, who is an official of State X elected at-large, as the official who must approve any issue of industrial development bonds for the State. Under this section, State X's attorney general is an applicable elected representative who may approve the issue after the public notice and public hearing requirements are satisfied.

*Example (4).* (i) City X, a city located in County Y and State Z, proposes to issue an industrial development bond, the proceeds of which are to finance a facility located entirely within the geographic jurisdiction of City X. Under the provisions of paragraph (c), only City X must approve the issue because it is the issuer and the facility is to be located entirely within the geographic jurisdiction of City X.

(ii) Mayor A, the chief elected executive officer of City X, has designated, for purposes of this section, Deputy Mayor B, an official of City X elected at-large, to approve industrial development bond issues for the city. Under the provisions of paragraph (e), Deputy Mayor B may approve the issue, since he is an applicable elected representative, after the public notice and public hearing requirements are satisfied.

*Example (5).* (i) County M proposes to issue an industrial development bond to finance a project located partly within the geographic jurisdiction of County M and partly within the geographic jurisdiction of County N. Both counties are located in State X. The part of the project in County N is also located partly within the geographic jurisdiction of City O and partly within the geographic jurisdiction of City P. Under the provisions of paragraph (c)(2), County M must give issuer approval. Additionally, under the provisions of paragraph (c)(3), either State X, County N, or both Cities O and P, must give host approval.

(ii) Counties M and N will approve the issue, but neither has any officials who are elected at-large by the voters of the respective governmental units. Both governmental units derive their authority from State X

which is the next higher governmental unit with an applicable elected representative. Under the provisions of paragraph (e), an applicable elected representative of State X must approve the issue for Counties M and N after the public notice and public hearing requirements are satisfied.

*Example (6).* (i) County M proposes to issue an industrial development bond to finance two facilities. One facility is located entirely within the geographic jurisdiction of County M and the second facility is located partly within the geographic jurisdiction of County M and partly within the geographic jurisdiction of County N. The second facility is also located within the geographic jurisdictions of Cities O and P, which cities are located within the geographic jurisdiction of County N. Under the provisions of paragraph (c)(2), County M must give issuer approval. Additionally, under the provisions of paragraph (c)(3), either State X, County N, or both Cities O and P, must give host approval.

(ii) Counties M and N will approve the issue. Each has a chief elected executive officer. Under the provisions of paragraphs (d) and (e), the chief elected executive officer of each county may approve the issue, after the public notice and public hearing requirements are satisfied.

*Example (7).* (i) State X proposes to issue an industrial development bond to finance a facility located partly within the geographic jurisdiction of State X and partly within the geographic jurisdiction of State Y. That portion of the facility located in State Y is located entirely within the geographic jurisdiction of City Z. State X must give issuer approval. Additionally, either State Y or City Z must give host approval as that part of the facility to be located outside State X will be entirely within the geographic jurisdiction of each unit.

(ii) Under the provisions of paragraphs (d) and (e), the governor of State X may approve the issue, after the public notice and public hearing requirements are satisfied. City Z (assuming that it give host approval for the bond) has a city council and a school board, both of which are elected legislative bodies with independent jurisdiction. The authority of the school board is limited under State law to matters directly concerning the provision of public education. Under paragraph (e), the school board is not an applicable elected representative of City Z but the city council is an applicable elected representative of City Z. The city council may approve the issue after the public hearing and public notice requirements are satisfied.

*Example (8).* (i) Public Housing Authority M, a governmental unit, proposes to issue an

industrial development bond to finance several housing projects with known sites located entirely within its geographic jurisdiction. M's geographic jurisdiction is coextensive with the combined geographic jurisdictions of Counties N and O. The projects are separately owned and managed. They are not adjacent to each other. The projects also are located in County N. Under the provisions of paragraph (c), M must give issuer approval.

(ii) M, which has no elected officials or legislature, was created by both Counties N and O pursuant to a special statute of State Q permitting such a joint undertaking. Both Counties N and O have an applicable elected representative. Under the provisions of paragraph (e)(2), either County N, County O, or State Q is deemed to be the next higher governmental unit with an applicable elected representative, and an applicable elected representative from any of these units may give the issuer approval for Authority M. Therefore, either the applicable representative of County N, County O, or State Q can give the issuer approval for Authority M.

(iii) For purposes of the host approval, the issuer approval by M will satisfy the host approval requirement only if the applicable elected representative of County N or State Q gives issuer approval for M. Under the provisions of paragraph (e)(2), the host approval requirement is satisfied only if qualified persons residing at the site of the facility are entitled to vote for the applicable elected representative who gave the approval (*i.e.*, the representative of State Q or County N). However, if the applicable elected representative of O gave issuer approval for Authority M, a separate host approval would be required because the residents of the sites where the projects are located (*i.e.*, County N) could not vote for the applicable elected representative of County O.

(iv) Public Housing Authority M conducts a public hearing concerning prospective housing projects following notice thereof published in a newspaper of general circulation in County N. Additionally, M provides notice to the residents of O (which are also within M's jurisdiction) in the manner required for notice of public hearing for other purposes under State Q law. Following the public hearing, the chief elected executive officer of County N approves for Authority M prospective issues for the project. M issues two \$7 million issues, one for each project. One issue is issued six months after the date of approval; the second issue is issued thirteen months thereafter. On these facts, only the first issue satisfied the public approval requirement of this section.

[T.D. 7892, 48 FR 21117, May 11, 1983]

### § 5f.103-3 Information reporting requirements for certain bonds.

(a) *General rule.* Under section 103(l), any private purpose bond issued after December 31, 1982 (including any obligation issued thereafter to refund private purpose bonds issued before December 31, 1982) shall be treated as an obligation not described in section 103(a) unless the information reporting requirement (as described in paragraph (c) of this section) is substantially satisfied with respect to the issue of which the bond is a part. For rules concerning bonds issued after December 31, 1986, see § 1.149(e)-1 of this chapter.

(b) *Private purpose bonds.* For purposes of this section, the term "private purpose bond" means—

(1) Any industrial development bond (as defined in section 103(b)(2) and § 1.103-7(b)(1)), or

(2) Any obligation which is issued as part of an issue all or a major portion of the proceeds of which are to be used directly or indirectly—

(i) To finance loans to individuals for educational or related expenses (hereinafter referred to as a "student loan bond"), or

(ii) By an organization described in section 501(c)(3) which is exempt from taxation by reason of section 501(a) (hereinafter referred to as "private exempt entity bond").

The meaning of the terms "major portion" and "directly or indirectly" shall be the same as under § 1.103-7. Student loan bonds include, but are not limited to, qualified scholarship funding bonds (as defined in section 103(e)).

(c) *Information required.* An obligation satisfies the requirements of section 103(l) and this section only if it is issued as part of an issue with respect to which the issuer, based on information and reasonable expectations determined as of the date of issue, submits on Form 8038 the information required therein, including—

(1) The name, address, and employer identification number of the issuer,

(2) The date of issue (as defined in paragraph (g)(1)),

(3) The face amount of the issue,

(4) The total purchase price of the issue,

(5) The amount allocated to a reasonably required reserve or replacement fund,

(6) The amount of lendable proceeds (as defined in paragraph (g)(4) of this section),

(7) The stated interest rate of each maturity (as defined in paragraph (g)(2) of this section) or, if the interest rate is variable, a description of the method under which the interest rate is computed,

(8) The term (as defined in paragraph (g)(3)) of each maturity,

(9) A general description of the property to be financed by the issue (including property financed by an obligation that will be refunded with the issue proceeds) which includes—

(i) The type of bond issued, that is, a student loan bond, a private exempt entity bond, or an industrial development bond and in the case of an industrial development bond described in section 103(b)(4), the subparagraph of section 103(b)(4) that describes the property, *e.g.*, for a football stadium, that the property is described in section 103(b)(4)(B),

(ii) The recovery classes (as defined in section 168(c)(2)), if applicable, of the various items of financed property and the approximate amount of lendable proceeds attributable thereto,

(iii) The approximate amount of lendable proceeds attributable to land or other property not described in subdivision (ii),

(iv) In the case of obligations described in section 103(b)(6) or private exempt entity bonds, the four-digit Standard Industrial Classification Code of the facilities financed,

(10) If section 103(k) (relating to public approval requirement for industrial development bonds) applies to such issue, the name(s) of the approving governmental unit(s) and of the applicable elected representative(s) (as defined in section 103(k)(2)(E) and § 5f.103-2(e)) or a description of the voter referendum that approved the issue for such unit(s), and

(11) The name, address, and employer identification number of—

(i) Each initial principal user (as defined in paragraph (g)(5) of this section) of any facilities provided with the proceeds of the issue,

(ii) The common parent, if any, of any affiliated group of corporations (as defined in section 1504(a) but determined without regard to the exceptions of section 1504(b)) of which such initial principal user is a member, and

(iii) Any person (not included under paragraph (c)(11)(i)) that is treated as a principal user under section 103(b)(6)(L), but only if the issue is treated as a separate issue under section 103(b)(6)(K).

The information to be supplied must be determined based on information and reasonable expectations as of the date of issue. Therefore, such statement need not be amended to report information learned subsequent to the date of issue. However, if the statement is filed after the date of issue it may reflect such information and the reasonable expectations of the issuer as of that date.

(d) *Additional information.* An issuer may supply the following information—

(1) The average maturity of the issue (as defined in section 103(b)(14)), and

(2) The average reasonably expected economic life (as defined in section 103(b)(14)) of the facility which is financed with the issue.

(e) *Time for filing.* The statement required by section 103(l) and this section shall be filed not later than the 15th day of the 2nd calendar month after the close of the calendar quarter in which the obligation is issued. It may be filed at any time before such date but must be complete based on facts and reasonable expectations as of the date of issue. The Secretary may grant an extension of time for filing the statement required under section 103(l) and this section if there is reasonable cause for the failure to file such statement in a timely fashion.

(f) *Place for filing.* Form 8038 is to be mailed to the Internal Revenue Service Center, Philadelphia, Pennsylvania 19255.

(g) *Definitions.* For purposes of this section—

(1) The term *date of issue* means the date on which the issuer physically exchanges the first of the obligations which are part of the issue for the underwriter's (or other purchaser's) funds. In the event that amounts are

periodically advanced with respect to an issue, the date of issue is when the first of such obligations under the issue is created and the funds are advanced.

(2) The term *maturity* means those obligations of the issue having both the same maturity date and the same stated interest rate.

(3) The term *term of an issue* means the duration of the period beginning on the date of issue and ending on the latest maturity date of any obligation of the issue without regard to optional redemption dates.

(4) The term *lendable proceeds* means the amount of the original proceeds, net of amounts allocated to a reasonably required reserve or replacement fund. See generally § 1.103-13(b) and § 1.103-14(d) for further definitions.

(5) The term *initial principal user* means each person who as of the date of issue is obligated to use the facility to such an extent that under section 103(b)(6) such person would be treated as a principal user. With respect to organizations described in section 501(c)(3), however, such determination is made without regard to whether such organization is treated as an exempt organization under section 103(b)(3) and § 1.103-7(b)(2).

[T.D. 7892, 48 FR 21120, May 11, 1983, as amended by T.D. 8129, 52 FR 7411, Mar. 11, 1987; T.D. 8425, 57 FR 36003, Aug. 12, 1992]

**§ 5f.163-1 Denial of interest deduction on certain obligations issued after December 31, 1982, unless issued in registered form.**

(a) *Denial of deduction generally.* Interest paid or accrued on a registration-required obligation (as defined in paragraph (b) of this section) shall not be allowed as a deduction under section 163 or any other provision of law unless such obligation is issued in registered form (as defined in § 5f.103-1(c)).

(b) *Registration-required obligation.* For purposes of this section, the term “registration-required obligation” means any obligation except any one of the following:

(1) An obligation issued by a natural person.

(2) An obligation not of a type offered to the public. The determination as to whether an obligation is not of a type offered to the public shall be based on

whether similar obligations are in fact publicly offered or traded.

(3) An obligation that has a maturity at the date of issue of not more than 1 year.

(4) An obligation issued before January 1, 1983. An obligation first issued before January 1, 1983, shall not be considered to have been issued on or after such date merely as a result of the existence of a right on the part of the holder of such obligation to convert such obligation from registered form into bearer form, or as a result of the exercise of such a right.

(5) An obligation described in subparagraph (1) of paragraph (c) (relating to certain obligations issued to foreign persons).

(c) [Reserved]

(d) *Effective date.* The provisions of this section shall apply to obligations issued after December 31, 1982, unless issued on an exercise of a warrant for the conversion of a convertible obligation if such warrant or obligation was offered or sold outside the United States without registration under the Securities Act of 1933 and was issued before August 10, 1982.

(e) *Obligations first issued after December 31, 1982, where the right exists for the holder to convert such obligation from registered form into bearer form.* [Reserved]

(f) *Examples.* The application of this section may be illustrated by the following examples:

*Example (1).* All of the shares of Corporation X are owned by two individuals, A and B. X desires to sell all of its assets to Corporation Y, all of the shares of which are owned by individual C. Following the sale, Corporation X will be completely liquidated. As partial consideration for the Corporation X assets, Corporation Y delivers a promissory note to X, secured by a security interest and mortgage on the acquired assets. The note given by Y to X is not of a type offered to the public.

*Example (2).* Corporation Z has a credit agreement with Bank M pursuant to which Corporation Z may borrow amounts not exceeding \$10X upon delivery of Z's note to Bank M. The note Z delivers to M is not of a type offered to the public.

*Example (3).* Individuals D and E operate a retail business through partnership DE. D wishes to loan partnership DE \$5X. DE's note evidencing the loan from D is not of a type offered to the public.

*Example (4).* Individual F owns one-third of the shares of Corporation W. F makes a cash advance to W. W's note evidencing F's cash advance is not of a type offered to the public.

*Example (5).* Closely-held Corporation R places its convertible debentures with 30 individuals who are United States persons. The offering is not required to be registered under the Securities Act of 1933. Similar debentures are publicly offered and traded. The obligations are not considered of a type not offered to the public.

*Example (6).* In 1980, Corporation V issued its bonds due in 1986 through an offering registered with the Securities and Exchange Commission. Although the bonds were initially issued in registered form, the terms of the bonds permit a holder, at his option, to convert a bond into bearer form at any time prior to maturity. Similarly, a person who holds a bond in bearer form may, at any time, have the bond converted into registered form.

(i) Assume G bought one of Corporation V's bonds upon the original issuance in 1980. In 1983, G requests that V convert the bond into bearer form. Except for the change from registered to bearer form, the terms of the bond are unchanged. The bond held by G is not considered issued after December 31, 1982, under § 5f.163-1(b)(4).

(ii) Assume H buys one of Corporation V's bonds in the secondary market in 1983. The bond H receives is in registered form, but H requests that V convert the obligation into bearer form. There is no other change in the terms of the instrument. The bond held by H is not considered issued after December 31, 1982, under § 5f.163-1(b)(4).

(iii) Assume the same facts as in (ii) except that in 1984 I purchases H's V Corporation bond, which is in bearer form. I requests V to convert the bond into registered form. There is no other change in the terms of the instrument. In 1985, I requests V to convert the bond back into bearer form. Again, there is no other change in the terms of the instrument. The bond purchased by I is not considered issued after December 31, 1982, under § 5f.163-1(b)(4).

*Example (7).* Corporation U wishes to make a public offering of its debentures to United States persons. U issues a master note to Bank N. The terms of the note require that any person who acquires an interest in the note must have such interest reflected in a book entry. Bank N offers for sale interests in the Corporation U note. Ownership interests in the note are reflected on the books of Bank N. Corporation U's debenture is considered issued in registered form.

*Example (8).* Issuer S wishes to make a public offering of its debt obligations to United States persons. The obligations will have a maturity in excess of one year. On November 1, 1982, the closing on the debt offering occurs. At the closing, the net cash proceeds of

the offering are delivered to S, and S delivers a master note to the underwriter of the offering. On January 2, 1983, S delivers the debt obligations to the purchasers in definitive form and the master note is cancelled. The obligations are not registration-required because they are considered issued before January 1, 1983.

*Example (9).* In July 1983, Corporation T sells an issue of debt obligations maturing in 1985 to the public in the United States. Three of the obligations of the issue are issued to J in bearer form. The balance of the obligations of the issue are issued in registered form. The terms of the registered and bearer obligations are identical. The obligations issued to J are of a type offered to the public and are registration-required obligations. Since the three obligations are issued in bearer form, T is subject to the tax imposed under section 4701 with respect to the three bearer obligations. In addition, interest paid or accrued on the three bearer obligations is not deductible by T. Moreover, since the issuance of the three bearer obligations is subject to tax under section 4701, J is not prohibited from deducting losses on the obligations under section 165(j) or from treating gain on the obligations as capital gain under section 1232(d). The balance of the obligations in the issue do not give rise to liability for the tax under section 4701, and the deductibility of interest on such obligations is not affected by section 163(f).

*Example (10).* Broker K acquires a bond issued in 1980 by the United States Treasury through the Bureau of Public Debt. Broker K sells interests in the bond to the public after December 31, 1982. A purchaser may acquire an interest in any interest payment falling due under the bond or an interest in the principal of the bond. The bond is held by Custodian L for the benefit of the persons acquiring these interests. On receipt of interest and principal payments under the bond, Custodian L transfers the amount received to the person whose ownership interest corresponds to the bond component giving rise to the payment. Under section 1232B, each bond component is treated as an obligation issued with original issue discount equal to the excess of the stated redemption price at maturity over the purchase price of the bond component. The interests sold by K are obligations of a type offered to the public. Further, the interests are, in accordance with section 1232B, considered issued after December 31, 1982. Accordingly, the interests are registration-required obligations under § 5f.163-1(b).

[T.D. 7852, 47 FR 51362, Nov. 15, 1982, as amended by T.D. 7965, 49 FR 33235, Aug. 22, 1984]

**§ 5f.168(f)(8)-1 Questions and answers concerning transitional rules and related matters regarding certain safe harbor leases.**

The following questions and answers concern the transitional rules and related matters regarding certain safe harbor leases under section 208(d) of the Tax Equity and Fiscal Responsibility Act of 1982 (Pub. L. 97-248) ("TEFRA"):

*Q-1: If a lessee, prior to the period beginning after December 31, 1980, and ending before July 2, 1982 (the "window period"), enters into a binding contract to acquire property and the property is delivered to the lessee during the window period, is the property eligible for the transitional rule provided in section 208(d)(3) of TEFRA which applies the safe harbor leasing rules of section 168(f)(8) of the Internal Revenue Code of 1954 as in effect before the enactment of TEFRA?*

A-1: Yes, assuming all other requirements of the TEFRA transitional rules are met. Section 208(d)(3)(A) (i) and (ii) of TEFRA provide alternative tests under which an item of property may constitute "transitional safe harbor lease property" for purposes of the transitional rules under the modifications to the safe harbor lease provisions of section 168(f)(8). The tests are:

- (i) The lease entered into a binding contract to acquire the property;
- (ii) The lessee entered into a binding contract to construct the property;
- (iii) The property was acquired by the lessee; or
- (iv) Construction of the property was commenced by or for the lessee.

These tests are stated in the alternative, and, accordingly, property may be eligible for pre-TEFRA safe harbor leasing if any one of the tests is satisfied. Thus, if a lessee acquired property during the window period, the property may be eligible for pre-TEFRA safe harbor leasing even though a binding contract to acquire the property was executed before the window period. Similarly, if construction of property commences during the window period, the property may be eligible for pre-TEFRA safe harbor leasing even though a binding contract to construct the property was executed before the window period.

*Q-2: How do the transitional rules apply to components of an integrated manufacturing, production, or extraction process, none of which would be considered "placed in service" until all of the components are placed in service?*

A-2: (i) The transitional rules regarding acquisition, binding contracts, and commencement of construction are applied to each separate item of property which is part of a manufacturing, production, or extraction

process. What constitutes a separate item will be determined on a case-by-case basis, taking into account all relevant factors. In general, a discrete component capable of performing a function which is separate from or in addition to the function of other components to which it may be related is a separate item of property; but an item that is integrated into a component which performs a function separate from other components to which it is related is not itself a separate item of property. For example, a bolt or a nut that is used to construct a machine does not constitute a separate item of property. On the other hand, the transitional rules will not be applied to an entire facility as a whole, as was the case under the investment tax credit transition rule of section 50 in *Hawaiian Independent Refinery, Inc. v. United States*, 49 AFTR 2d 675 (Ct. Cl. Tr. Judge 1982), where the taxpayer was held to have constructed a property which consisted of an entire refinery complex. Thus, for example, for purposes of these transitional rules, an oil or gas well, storage tanks, and pipeline located on a lease would not be considered a single item of property. Although each item is related to the production of oil or gas, each is discrete and each is capable of performing a separate function from the other. In addition, in the case of an integrated manufacturing, production, or extraction process, commencement of construction of one item of property within the process would not be considered construction of any other item of property that is part of the process.

(ii) If property qualifies as transitional safe harbor lease property, all direct and indirect costs allocable to the property (except for those described in § 5c.168(f)(8)-6(a)(2)(ii)) and required to be capitalized for Federal income tax purposes will also qualify as transitional safe harbor lease property to the extent such costs are incurred on or before the date on which the property is leased under section 168(f)(8).

(iii) The adjusted basis to the lessor of property leased on or prior to December 1, 1982, under a transitional safe harbor lease shall be deemed to include all direct and indirect costs (including installation costs) described in subdivision (ii) allocable to such property that were incurred before it was leased despite the fact that such costs were not included in the lessor's adjusted basis of such property under the terms of the lease agreement, provided that the parties to such agreement reasonably believed that they had leased the whole of such property. Such costs will be treated as having been included in the lessor's adjusted basis of such safe harbor lease property on the date the lease agreement was executed without regard to any provisions in the lease agreement that limits the dollar amount of the permissible adjustment of the lessor's adjusted basis to such property. To qualify for inclusion of

such direct and indirect costs within the basis of such property, the parties to such agreement must file an amended Form 6793, the Safe Harbor Lease Information Return, no later than April 21, 1983, which reflects the parties' intent to include installation and other such costs within the basis of such property. For purposes of this subdivision, a transitional safe harbor lease is a lease either which was executed after July 1, 1982, and on or prior to December 1, 1982, or which includes some transitional safe harbor lease property, as defined in TEFRA section 208(d)(3), that was placed in service after July 1, 1982, and on or prior to December 1, 1982.

*Q-3: What test will be applied in determining whether an item of property is constructed or acquired by the lessee?*

A-3: Except as expressly provided in section 208(d)(3) (D) or (E) of TEFRA, the determination of whether and when any such events occurred with respect to an item of property will generally be made in accordance with the principles and precedents prior to TEFRA under the investment tax credit and depreciation allowance transitional provisions. See §§ 1.48–2(b)(6) and 1.167(c)–1(a)(2), which provide definitions of the term “acquired”, and §§ 1.48–2(b)(1) and 1.167(c)–1(a)(1), which provide definitions of the term “constructed by”. Also see Rev. Rul. 80–312, 1980–2 C.B. 21, which discusses the factors to be considered in determining when a taxpayer has control over a project being constructed.

In general, for purposes of TEFRA section 208(d)(3), construction of an item of property is considered to have commenced when physical work of a significant nature has begun with respect to the property. Thus, construction does not begin when parts or components which enter into construction are acquired. If property is assembled from purchased parts or components, the commencement of construction occurs when actual assembly of the property begins. If a taxpayer manufactures a major part or component of an item of property for itself, construction will be considered to have begun when the manufacturing of that part or component commences. However, construction of an item of property will not be considered as begun if physical work by the taxpayer relates to minor parts or components. Clearing and grading of land will be considered in determining when construction begins on an item of property only if they are directly associated with the construction of the property.

*Q-4: Under section 168(f)(8)(J), the at-risk rules are liberalized for closely held lessors that engage in safe harbor leasing. These rules apply “in the case of property placed in service after the date of enactment of this subparagraph,” namely, after September 3, 1982.*

*Do the liberalized at-risk rules apply in the case where otherwise qualified property is*

*placed in service by a lessee in August of 1982 but is leased by a corporate lessor subject to the at-risk rules after September 3, 1982?*

A-4: The liberalized at-risk rule in section 168 (f)(8)(J) is applicable in this case because, in determining whether property is placed in service before or after the date of enactment of section 168(f)(8)(J), the relevant date is the date the property is placed in service by the lessor. Additionally, a closely held corporate lessor, which is not a personal service corporation, may lease transitional safe harbor lease property placed in service after September 3, 1982, under the liberalized at-risk rule.

*Q-5: Is it necessary for property placed in service by a lessee in December of 1982 to be leased before January 1, 1983, in order to qualify under the general transitional rule of section 208(d)(3)(A) of TEFRA, which requires that the property be placed in service before January 1, 1983?*

A-5: The legislative intent of this transitional rule was to provide a 3-month period after property is placed in service by a lessee in which a safe harbor lease could be entered into. *Cf.* section 209(c) of TEFRA (3-month window applies to true leases entered into after 1983). The legislative intent further was to permit property to qualify as transitional safe harbor lease property if it was placed in service by the end of 1982 by a lessee. Accordingly, transitional safe harbor lease property placed in service in 1982 by a lessee may be leased in a safe harbor lease transaction within 3 months after it is placed in service by the lessee without losing its status as transitional safe harbor lease property.

However, for all other purposes of the Code other than section 168(f)(8)(D)(i), section 168(f)(8)(D)(viii)(II) will apply and the property will be treated as originally placed in service not earlier than the date that the property is used under the lease. Thus, for example, if transitional safe harbor lease property is placed in service in December of 1982 and leased under section 168(f)(8) in January of 1983, the property will not lose its status as transitional safe harbor lease property, but the basis adjustment rules of section 48(g) will apply with respect to the property.

*Q-6: Will a contract to acquire property be considered “binding” for purposes of section 208(d)(3)(A)(i) of TEFRA if the contract contains no liquidated damages clause?*

A-6: Generally, an irrevocable contract which contains no provision for liquidated damages in the event of breach or cancellation would be considered binding. Moreover, in determining the amount of the lessee's potential liability, the fair market value of the property will not be taken into account. For example, if a lessee entered into an irrevocable contract to purchase an asset for \$100 and the contract contained no provision for liquidated damages, the contract would be

considered binding notwithstanding the fact that the property at all times after July 1, 1982, had a value of \$99 and under local law the seller could only recover the difference in the event the lessee failed to perform. On the other hand, if the contract by its terms provided for liquidated damages of less than 5 percent of the purchase price which is in lieu of any damages allowable by law, in the event of breach or cancellation, the contract would not be considered binding.

*Q-7: How does the 50-percent limitation on lessors in section 168(i)(1) and the 45-percent limitation on lessees in section 168(f)(8)(D)(ii) apply to corporations which are part of an affiliated group filing consolidated returns?*

*A-7: Both the 50-percent limitation on lessors and the 45-percent limitation on lessees will be applied on a consolidated basis for corporations filing consolidated returns.*

*Q-8: Section 168(f)(8)(J) liberalized the at-risk rules for safe harbor leasing and provides that in cases where the safe harbor lessee would be considered the owner of the property without regard to the safe harbor lease, the lessor is considered to be at risk with respect to the property in an amount equal to the amount the lessee is considered at risk with respect to such property as determined under section 465.*

*Will a corporate lessor that would ordinarily be subject to the at-risk rules under section 465 be exempt from such rules under section 168(f)(8)(J) in a situation where acquisition of the leased property is financed with non-recourse debt by a lessee that is not subject to the at-risk rules?*

*A-8: Yes. The liberalized at-risk rules of section 168(f)(8)(J) will apply in cases where the lessee's ACRS deductions and investment tax credit with respect to the property would not have been limited under the at-risk rules had the parties not elected treatment under section 168(f)(8).*

*Q-9: Section 168(f)(8)(J)(ii) excepts certain service corporations from the liberalized at-risk rules of section 168(f)(8)(J)(i). Does the exception in subdivision (ii) also extend to subsidiaries of such service corporations that file consolidated returns?*

*A-9: Yes. The liberalized at-risk rules of section 168(f)(8)(J)(i) will not apply to any subsidiary filing a consolidated return with a service organization described in section 168(f)(8)(J)(ii).*

*Q-10: Will property lose its status as transitional safe harbor lease property under section 208(d)(3) of TEFRA solely by reason of the fact that the person who is a party to a binding contract to acquire the property assigns his rights in the contract to another person?*

*A-10: When a person who is a party to a binding contract transfers his rights in the contract (or the property covered by the contract) to another person and the transferor (or a corporation which is a member of the same affiliated group as the transferor) will use the property under a lease for a period*

*not less than 50 percent of the appropriate recovery period for the leased property under section 168(c), then to the extent of the transferred rights, this other person will succeed to the position of the transferor with respect to the binding contract and the property. Accordingly, under these circumstances, property will not lose its status as transitional safe harbor lease property.*

*In addition, property will not be disqualified as transitional safe harbor lease property solely by reason of a transfer by a person of his rights in a contract (or the property covered by the contract) in a transaction in which the basis of the property in the hands of the transferee is determined by reference to its basis in the hands of the transferor (e.g., transfers governed by sections 332, 351, 361, 721, and 731). Thus, for example, if a corporation entered into a binding contract for the construction or acquisition of property prior to July 1, 1982, and after such date assigned the contract to a corporation within the same affiliated group which files consolidated returns, the assignee will be entitled to treat the property acquired pursuant to the contract as transitional safe harbor lease property, assuming the property would have so qualified in the hands of the transferor. Similarly, if a joint venture or partnership between two corporations entered into a binding contract or commenced construction of property before July 2, 1982, but dissolved and distributed its assets to the partners or joint venturers after July 2, 1982, the joint venturers or partners may treat the assets as transitional safe harbor lease property, assuming the property would have so qualified had the joint venture or partnership remained in existence.*

*Q-11: During 1982, Corporation Y placed in service section 38 property with a total cost of \$100X. On August 15, 1982, Corporation Y placed in service the last component of an entire facility within the meaning of § 5c.168(f)(8)-6(b)(2). The facility had a total cost basis of \$40X, of which \$30X was transitional safe harbor lease property within the meaning of section 208(d)(3) of TEFRA and \$10X was not transitional safe harbor lease property. On November 1, 1982, Corporation Y sold and leased back under a section 168(f)(8) lease the \$30X of transitional safe harbor lease property in the facility.*

*Will the entire facility rule in § 5c.168(f)(8)-6(b)(2) apply in this situation where the taxpayer has not leased all of the section 38 property in the facility?*

*A-11: No. The placed in service date, for purposes of the rule requiring that property be leased within 3 months after such property was placed in service by the lessee, would be determined under the entire facility rule in § 5c.168(f)(8)-6(b)(2) only if Corporation Y had leased all the qualified leased property in the facility. Since Corporation Y leased only the \$30X of transitional section*

38 property, of the facility and did not lease the § 5c.168(f)(8)–6(b)(2) for purposes of determining the placed in service date for the property under the section 168(f)(8) lease.

*Q–12: Assume the same facts as in Q–11, except that Corporation Y had also placed in service by August 15, 1982, § 30X of miscellaneous machinery and equipment all of which was transitional safe harbor lease property within the meaning of section 208(d)(3) of TEFRA. On November 1, 1982, in addition to the § 30X of transitional property in the facility, Corporation Y also sold and leased back under a separate section 168(f)(8) lease the § 30X of miscellaneous machinery and equipment.*

*Will the entire facility rule in § 5c.168(f)(8)–6(b)(2) apply in this situation to the § 30X of transitional property in the facility?*

A–12: Yes. Since Corporation Y leased § 30X of transitional machinery and equipment and the § 30X of the facility which consisted of transitional property, Corporation Y can lease none of the nontransitional property in the facility because, by reason of the 45-percent cap on lessees contained in section 168(f)(8)(D) (ii) and (iii) and (I), it is not qualified leased property for purposes of section 168(f)(8). Thus, on the facts, Corporation Y has leased all the qualified leased property in the facility.

*Q–13: Corporation X constructed a manufacturing complex consisting of three integrated operational components, each with a different ADR present class life midpoint, which together constitute an “entire facility” within the meaning of § 5c.168(f)(8)–6(b)(2). The last components of the facility were placed in service on August 15, 1982. On October 1, 1982, Corporation X sold to Corporation Z and leased back under section 168(f)(8) all the qualified leased property of the facility.*

*For purposes of the rule requiring that property be leased within 3 months after such property was placed in service by the lessee, will the leased components of the entire facility be considered placed in service by the lessee on August 15, 1982, the date the last components were placed in service, if the components are leased at one time pursuant to documents consisting of three section 168(f)(8) leases with different terms to reflect the different ADR midpoint lives of the qualified leased property in the facility?*

A–13: Yes. If the entire facility rule in § 5c.168(f)(8)–6(b)(2) applies, the facility components which were placed in service prior to August 15, 1982, will be treated as placed in service by the lessee on August 15, 1982, for purposes of the 3-month rule. This rule will apply if all the qualified leased property of the facility is leased at one time. The documentation may be in the form of multiple, simultaneously executed agreements or maybe in the form of an agreement comprised of one or more parts or schedules. Each of the multiple agreements, or each of

the parts or schedules of an agreement, may have different lease terms for property with different ADR midpoint lives, so long as each such agreement or part of schedule individually would be treated as a lease under section 168(f)(8), taking into account the entire facility rule, with lease terms commencing on the same date. A single transaction effected by multiple agreements or by an agreement with one or more parts or schedules will meet the maximum lease term requirement of § 5c.168(f)(8)–5(b) so long as each agreement or each part or schedule of an agreement meets the maximum lease term requirement.

*Q–14: Under § 5c.168(f)(8)–6(b)(2), the special rule for facilities applies only if the entire facility is leased under a section 168(f)(8) lease.*

*Will a transaction not qualify under section 168(f)(8) if the parties, acting in good faith, omit an insubstantial portion of the qualified lease property from the lease?*

A–14: No. The facility rule of § 5c.168(f)(8)–6(b)(2) will apply if the parties, acting in good faith, substantially comply with its terms.

*Q–15: When will construction of an aircraft be considered to have been begun after June 25, 1981, and before February 20, 1982, for purposes of TEFRA section 208(d)(3)(D)?*

A–15: Construction of an aircraft will be considered to have been begun after June 25, 1981, and before February 20, 1982, if during such period any of the following events occurred:

- (i) Construction or reconstruction of a sub-assembly designated for the aircraft was commenced;
- (ii) Construction of a lot increment of sub-assemblies (one or more of which was designated for the aircraft) was commenced; or
- (iii) The stub wing join occurred.

*Q–16: Does the definition of assets used in the manufacture or production of steel for purposes of TEFRA section 208(d)(2)(F) include all assets used in this function (such as electrical and steam generators and distribution equipment, coke oven by-product equipment) although not necessarily includible in the former ADR guideline class for primary steel mill products?*

A–16: Yes, all assets that are used, in their primary function, as an integral part of the steel manufacturing or production process are included. Cf. § 1.48–1(d)(4). However, the steel manufacturing or production process does not include processing beyond the production of primary ferrous metals (as defined by the ADR Class for Manufacture of Primary Ferrous Metals).

*Q–17: Where a qualified mass commuting vehicle meets the requirements for both the TEFRA section 208(d)(2) transitional rule and the TEFRA section 208(d)(5) special rule for mass commuting vehicles, which provision will control?*

A–17: The general transitional rule of TEFRA section 208(d)(2) will apply. Thus,

pursuant to TEFRA section 208(d)(2)(B), the provisions of section 168(f)(8)(J), but not the provisions of section 168(i)(1), will apply only to such property. If the general transitional rule does not apply to a specific mass commuting vehicle, the provision of section 168(i)(1) applies to the lessor who leases such vehicle.

*Q-18: Does the definition of a qualified mass commuting vehicle include component parts of a qualified mass commuting vehicle—such as an undercarriage of a subway car or the costs of rehabilitation or reconstruction of a mass commuting vehicle (or component part thereof)?*

A-18: Yes.

[T.D. 7850, 47 FR 50853, Nov. 10, 1982, as amended by T.D. 7879, 48 FR 11942, Mar. 22, 1983]

## PART 6a—TEMPORARY REGULATIONS UNDER TITLE II OF THE OMNIBUS RECONCILIATION ACT OF 1980

Sec.

6a.103A-1 Interest on mortgage subsidy bonds.

6a.103A-2 Qualified mortgage bond.

6a.103A-3 Qualified veterans' mortgage bonds.

6a.6652(g)-1 Failure to make return or furnish statement required under section 6039C.

AUTHORITY: 26 U.S.C. 7805.

Sections 6a.103A-2(k), (l), and (m) also issued under 26 U.S.C. 103A(j) (3), (4), and (5).

### § 6a.103A-1 Interest on mortgage subsidy bonds.

(a) *In general*—(1) *Mortgage subsidy bond*. A mortgage subsidy bond shall be treated as an obligation not described in section 103 (a)(1) or (a)(2). Thus, the interest on a mortgage subsidy bond is includable in gross income and subject to Federal income taxation.

(2) *Exceptions*. Any qualified mortgage bond and any qualified veterans' mortgage bond shall not be treated as a mortgage subsidy bond. See § 6a.103A-2 with respect to requirements of qualified mortgage bonds and § 6a.103A-3 with respect to requirements of qualified veterans' mortgage bonds.

(3) *Additional requirement*. In addition to the requirements of § 6a.103A-2, § 6a.103A-3, and this section, qualified mortgage bonds and qualified veterans' mortgage bonds shall be subject to the requirements of section 103(c) and the regulations thereunder.

(4) *Advance refunding*. On or after December 5, 1980, no tax-exempt obligation may be issued for the advance refunding of a mortgage subsidy bond (determined without regard to section 103A(b)(2) or § 6a.103A-1(a)(2)). An obligation issued for the refunding of a mortgage subsidy bond will be considered to be an advance refunding obligation if it is issued more than 180 days before the prior issue is discharged.

(5) *Registration*. Any obligation that is part of a qualified mortgage bond issue or qualified veterans' mortgage bond issue and which is issued after December 31, 1981, must be in registered form. The term "in registered form" has the same meaning as in § 1.6049-2(d). Thus, in general, an obligation is issued in registered form if it is registered as to both principal and interest and if its transfer must be effected by the surrender of the old instrument to the issuer and by either the reissuance of the old instrument to a new holder or the issuance of a new instrument to a new holder.

(b) *Definitions*. For purposes of §§ 6a.103A-2, 6a.103A-3, and this section the following definitions apply:

(1) *Mortgage subsidy bond*. (i) The term "mortgage subsidy bond" means any obligation which is issued as part of an issue a significant portion of the proceeds of which is to be used directly or indirectly to provide mortgages on owner-occupied residences.

(ii) For purposes of subdivision (i), a significant portion of the proceeds of an issue is used to provide mortgages if 5 percent or more of the proceeds are so used.

(2) *Mortgage*. The term "mortgage" includes deeds of trust, conditional sales contracts, pledges, agreements to hold title in escrow, and any other form of owner financing.

(3) *Bond*. The term "bond" means any obligation. The term "obligation" means any evidence of indebtedness.

(4) *State*. (i) The term "State" includes a possession of the United States and the District of Columbia.

(ii) For purposes of subdivision (i), obligations issued by or on behalf of any State or local governmental unit by constituted authorities empowered